

You can't combine constitutional reform and problems of transition

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More time will be needed.

CURRENT DEBATES ON CONSTITUTIONAL REFORM IN GERMANY

Superior period of transition - until end of 1994

I. The Process of Unification

Art. 146

New Const. for unification.

Treaty of currency, social welfare, then through Bundestag.

1. Unification Treaty (UT)
2. Implementation of the UT
 - a) Unification of the Legal System
 - b) Unification of the Administration Bodies
 - c) Unification of the judiciary

Art. 23

Accession without new constit.

II. The Constitutional Reform

1. The General Reform of the Basic Law

a) Reasons:

- Unification of the two German States
- Modernization of the Constitution
- European Integration

b) Agendas:

- Fundamental and Social Rights
- Federal System
- Direct Democracy

c) Procedure:

- Common Constitutional Law Commission
- Amendment Procedures in the two Houses (Bundestag Bundesrat)
- Referendum (?)

Mid-life crisis of the Basic Law

We doubt whether we have a federal state any more

32 Bundesrat
32 Bundestag.

Problems of financial structures
Data protection
New media
Pollution
Social Rts.
Equal Rts.
more than non-discrim.

2. Constitutional Reforms in the States (Länder)

a) "New" States

- Bill of rights
- Parliamentary procedure
- Direct Democracy

b) "Old" States

III. Problems of Federation

1. Strengthening the States
2. Participation of the States at the European Integration
3. Financial System
 - Tax System
 - Redistribution and Compensation

You need social & econ. rts to use liberal rights equally.

For rts have to be made enforceable by statute which has to be constitutional

Without independent revenue,
regions are not independent
[either through own revenue
or share of national revenue]

Income Tax:

15% - local govt

42 - Länder

42 - federal

VAT - not so clear

37% - Länder

63% - Federation

More
than
80%
of
natl.
budget.

Municipals - own special taxes.

Each Land gets its share
in prop. to no. of inhabitants -
acc. to a formula which favours
'smaller' (poorer?) states.

Our system is highly personalized
through voting for Chancellor.
There should be a means of
votes on special issues (agendas).

IV. Direct Democracy

Gampell Park to discuss.

- Switz.
Italy have
We think they
are very good
1. People's "Request" (Volksinitiative)
 2. Legislature by the people
 - a) Motion - in Saxony 3.7 mil inhabs. - requires 40,000 signatures if contains draft law - goes to referendum - if Parla. proposes diff. - referendum succeeds if 15%.
 - b) Referendum
 - c) Plebiscite
 3. Elections by the People
 - a) General Elections
 - b) Direct Election of the President
 - c) Dissolution of the Parliament by the people
- (Then plebiscite sans restrictions)

No longer a real federation

- ① States are sovereign - without money to function
- ② Parls. without real competence

a) We can have fewer, bigger, stronger states

or
b) We can have a new system of burden-sharing between W & E, separate from financial pacts, of Benoit.

Social rts protect indiv. against
societal pressures.

Can be claimed by individual
- if no shelter, a family can
claim from police.

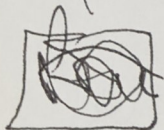
60% of property is publicly-owned
or publicly influenced.

The Basic Law is neutral on
the economic system - Task for legislation

[It gives some elements of:
freedom of profession
property rts.]

Big space for legislature.

1979 - you can have co-determination.



Non-racial
happiness in
2 places -
Wild Boast
basins -
TV adverts

I've journeyed
into the future
- and it looks
like a TV advert
to this non-race.

GERMANY

Everyone has rty in his/her person-
product of labour.

Enshrinement of any
conception of rty.
creates problems.



The essence of rty is
excludability

legal

physical

moral

Squatters, labour tenants, pensioners

Rt to exclude
from access on
legal, physical
& moral grounds.

6/7

14/15

Quotable

NOTE: THESE ARE
'SCRAPS'.

NOTE VERY BEN
LECTURE.

Once upon a time, before the world was pum-
combined assault of neo-liberal certainty and post-modernist
vagary, there lived a quaint people who believed in the
capacity of all human beings for goodness. These curious
folk thought it was worthwhile to try to build a land in
which caring was more important than acquiring. They even
considered that it was a compliment and not a sneer to be to
be said to possess high ideals.

I am sure there are many of them in this hall, old and young
survivors of that age.

We buried many of our comrades in far away countries. They
should be honoured as patriots in a suitable way, their
bodies returned to South African soil if their families so
wish, or their lives honoured in some other manner. Our
country has many memorials and well-tended war graves, but
not one that relates to anyone who fell in the struggle
against apartheid.

Bram Fischer's ashes are still entombed in a prison yard.
They should be freed to be scattered on the Free State soil
that he loved so much.

We have many people, old and young, who left their studies
and their jobs, separated themselves from their families, to
join MK and, as they saw it and I see it, fight for freedom
in their land. Just as the ex-service men and women who
fought against Hitler received gratuities, housing grants
and special support to make up for missed education, so
should arrangements be made to recognise the years of risk
and dedication spent in the service of MK.

Our movement drew its strength from the fact that it was
broadly based. Every philosophy of struggle, from passive
resistance to armed confrontation with the state, has been

NOTE: THESE ARE SCRAPS TO BE SAVED IN A FILE MARKED 'SCRAPS'.

NOTE VERY BENE: THEY DO NOT FORM PART OF THE INAUGURAL LECTURE.

Once upon a time, before the world was put right by the combined assault of neo-liberal certainty and post-modernist vagary, there lived a quaint people who believed in the capacity of all human beings for goodness. These curious folk thought it was worthwhile to try to build a land in which caring was more important than acquiring. They even considered that it was a compliment and not a sneer to be to be said to possess high ideals.

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represented in it. The central theme has always been the importance of achieving basic democratic rights for everybody and moving swiftly to tackle the enormous inequalities created by apartheid. Those were our pre-occupations then, and they should be our concerns now.

- ① Inviol - 1st Gen.
- ② Property - land
- ③ Non-damagag. Matters } ^{Forwards well}
_{Progs - attend. } ^{state}}

Land
Notes for
presentation
(by Albie!)

Natural Land
resources Be

rimony of all

ownership, occup.

Foreign ownership - except
for residents -
Prohibit permission
to acquire
land.

use:

Legitimate exers of all people

Based on principles of equitable access

Stable

Procedures: Independent tribunal
Fair procedures
Applying criteria

Compensation

11(2) subject to duties/responsibls.

- ① Inviol - 1st Gen.
- ② Property - land.
- ③ Non-damag. Matter } ^{Forwards well.}
_{Progs. - attend.} } ^{state}

Natural Land - finite - patrimony of all
resources Conserved

Foreign Ownership - except
Investment - except
Permits permission
Woman's rights of land.

System of land-ownership, occup.
or use:

Legitimate eyes of all people
Based on principles of equitable access
Stable

Procedures: Independent tribunal
Fair procedures
Applying criteria

Compensation

11(2) subject to duties/responsib.

Employment equity [Equity programmes]
 From upliftment to empowerment
 - through entitlement

In a divided society with glaring ~~manifest~~ inequalities institutionalised by law and manifested in our affairs administrations with separate budgets and statistics, equal protection provides a major and unassailable guarantee of redistribution

Relationship between:

Constit (B & R) ↓
 Legislation ↓
 Courts ↓

↳
 ↳ ↳ ↳ ↳ ↳
 ↳ ↳ ↳ ↳ ↳
 ↳ ↳ ↳ ↳ ↳
 ↳ ↳ ↳ ↳ ↳

Positive rts / neg. rts
 entitlements through legislation - claims
 testing / judicial review
 defences against state action



①ullah - Bulahane

dv.

Wait - Gamado

Date OK?

② Wake man

⑥ Specs,

③ Firoz - have money

Aug. Land.

Upper House. - SA.

Does

④ McNeoid - Mason - Durban Univ.

Berkes. Piers Langer - want. Gaud

Linda Zaman.

⑤ Send: Worral
De Beer
Malan.

H.A. ET

Steve Karhmovitz
Shenaz Meer

Ken Owen
Business
Day.

Mang. Walha. - Revised.
Manghezi.



Most countries - legpl.
behind constt. or offic.
arrangements of power -
subvert hegemonies of
state, ^{controller} ~~owner~~ of econ,
Plaza Santana, heads of family.
Calle del Prado.

In SA - off.

Pluralism - not dom.

Econ. subord

Patriarchy -

Answer: Against Constt-plural.
- for pol plural. ? Legal pluralism.

① Rk - same/diffe. - rule.

② Bill of Rts - pol plural.

Can state promote anti-statism

③ ~~Bill of Rts~~ Constt Ass

④ Charter ⑤ Alc. leg. inst.

⑥ Civics - Const?



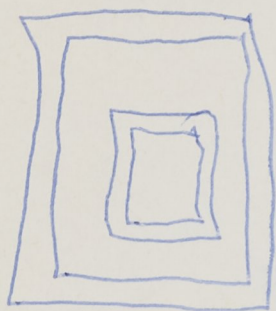
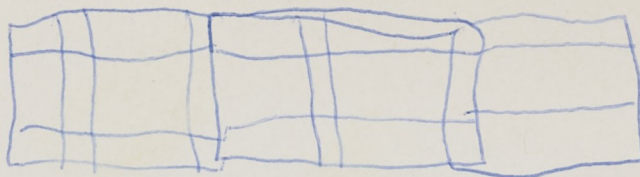
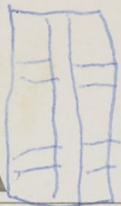
Boa

Entre

- ① Entre
- ② SA-pluralism.
State
Econ
Family, Soc. - formal
- ③ Write - I autob./nat.
 - a). Same/diff
 - b). Bill of Rts.
 - c). Bourstet Ass.
 - d). Charters
 - e). Privies.Peoples power / people's rts.

XII CONGRESO
MUNDIAL
DE SOCIOLOGIA

MADRID ESPAÑA 1990



Pluralism / consociat / corporatism.



What binds?

A situation in search
of a legal enquadramento.
USA - ~~needs~~ - sem
complexes.
Role of jury - hitting frontiers
of legal doctrine.

Accept contradicts -
not eliminate
(state / popular)
(gender neutral / gender
affirmative)



Trauma not disappear
Free adapt. of spirit of
draft Incl. Contr. of Rts of child
- themes - underlying.

Rt. to play, all of us - bear shock
when children report on deaths -
whether of 'comrades' or of
people under the command of
warlords, as through giving
a football score
~~Rt to learn - has been~~

Imag & culture -
W armth

as best
or
be helped.

have been

yes
no

educ more
& lib now
Pol. task
New tasks
Rt to have no
also to have no
study

Limits on State sovereignty -
territorial multiplication

good quotable
re losers &
winners!



The losers must
have hope.

Winning must make
a difference.

NGO - monitoring of monitors



Limits on State sovt -
territorial multiplication

- dangerous -
- competing sovereignties
- costly.



Checks & balances -
institutional
judicial
civil sovt.

The losers must
have hope.



Winning must make
a difference.

NGO - monitoring of monitors



Political

Regn - SA

Malawi - Swaz - Lesotho - SA

Botswana's role.

Organisational

UWC

Pretoria

Bot's

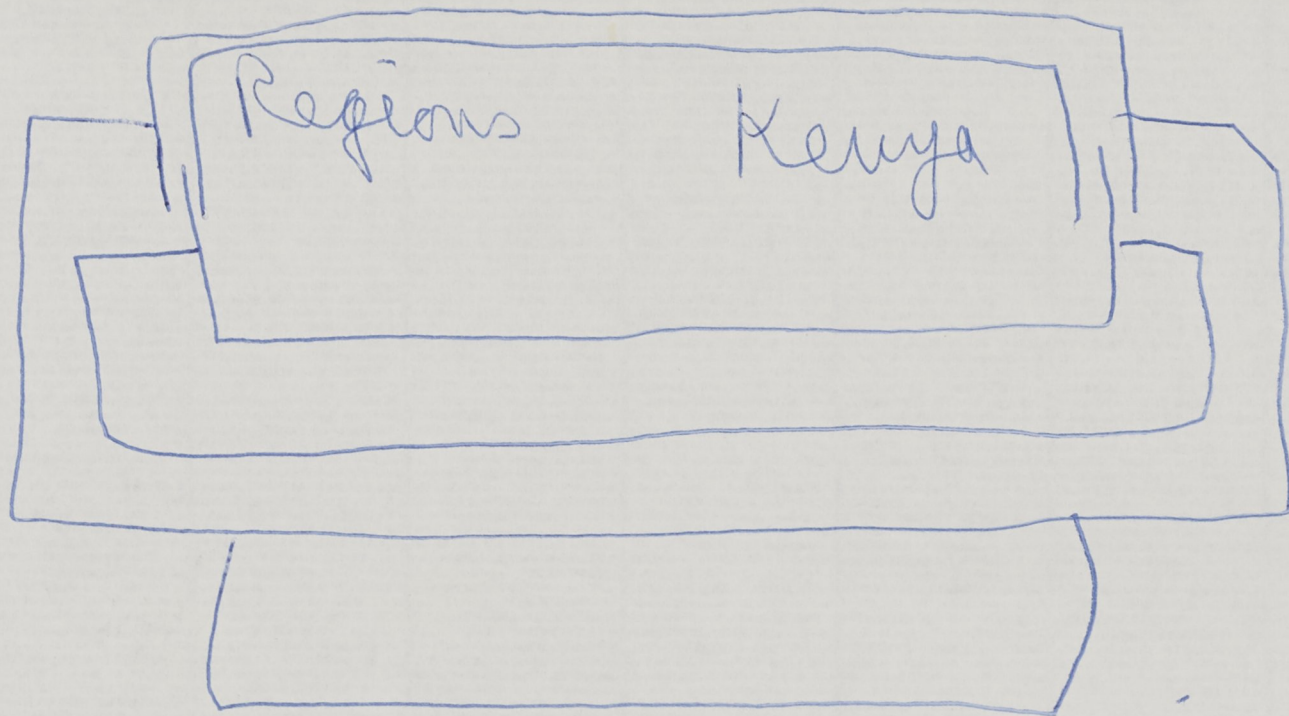
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Format

Themes - Panels .

Outsiders .

Keynote



Separate
conference.

socio. econ. regime
nation / region
Involvement

Themes:

Soft / hard.

CBO's

Soft: a) Min. standards

b) Reconcil, truth, justice. Phils

c) Open socy, account., transparency
- media.

d) Control of security organs

e) Bill of Rts - soc/secn-nts / it. to develop
- anti-disco.

f) Gender dimension



Hard ; 1). Civil society, role / relationship
NGOs - HKSD.

Work done.
2). Intern / regional
Perspectives. Build up.

Afternoon, in community.

If a
of a ne
privilege
follows
to that

Dedication of Advancing Rights in a Democratic S.A.

by
at
tribution

~~formulations may be mine, but all
the basic ideas emerged from struggle.~~

Readers will have little difficulty in
discerning ^(the influence of) decades of involvement with
the ANC. They will also understand
that what follows is not an official
presentation of ANC views, nor even
an unofficial one.

If a constitution is an autobiography
of a nation, we are the ^{privileged} generation
~~privileged to~~ ^{(that) well} do the writing; what
follows is a small personal contribution
to that vast ^{and noble} process. ~~Some of the~~

~~formulations may be mine, but all~~
~~the basic ideas emerged from struggle.~~
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discerning ^(the influence of) decades of involvement with
the ANC. They will also understand
that what follows is not an official
presentation of ANC views, nor even
an unofficial one.

The views are my own, not
those of "O.R." nor of the ANC

Dedictory note

Readers will have little difficulty
in discerning the influence of decades
of involvement with the ANC. They
might be less aware of the particular
impact ^{made on my generation} ~~on my thinking of Oliver~~
by Albert Luthe and Oliver Tambo.

Mechanisms - National / Object -

(Rts of
Bound
Comp

Adver

Meetings -

Land -
Property
rights

ment
saying?

- encourage - local agreed
solutions
in framework of law.

Process to establish
national criteria

Explain options

Assessors

Start: People best organised, clearest

& stage:

Quantify, pay out -
compensate

(1) Meeting - assess
- map

(2) Local sol.
where possible
Registered. reviewed - no

(3) If no consensus -
Assessors

If no agreement -
Land court.

Examples

Black. Oppression,
proceeds - followed

Security
Built in review -
spec. circs.

Mechanisms - National/object

(Rts of necessity - adjudicators)

Boundaries - land for settlement
Swift procedures. Ganyam?

Competing claims

Advertisement - for claims

Meetings - explain - rts, needs
- encourage - local agreed solutions

Process to establish national criteria

in framework of law

Explain options

Assessors

Start: People best organised, clearest

& stage:

Quantify, pay out - compensate

(1) Meeting - assess - mag.

(2) Local sol. where possible. Registered. Reviewed - no.

(3) If no consensus -

Assessors

If no agreement -

Land court.

Examples

Black oppression, procs - followed

Security
Built in review - spec. circs.

Out of own J.A. experience,
hist, relats.
Could have bold criteria, ^{perspectives,}
cautious application.
Legitimise, stabilise.

Chiefs - controllers

Women.

Top down /

bottoms up.

② Human res. dimension

Land & legittimacy

①
Legal

Conflict - law
Dispossess - law human res.

Rights
dimension

Boers

gun, treaties
contracts

Law - stop large
sharecropping
- tenancy
- lab. tenancy
- removal

Sense res. never existing -
- diff. forms

Others - res: Birthright

Occy Work - Invest -

apartment
dispossess -
- a. a. transport
pricing subsidies low
interest loans a cap

Inheritance
Basis - maize - soil

Third group - res - title - investment
- larger econ.

Look at actual values - strip
away: race, metaphysics.

(3) De-social - finance.

Econ. dimension - 20% - 30% w farm
- productive (Sept Ags)

Skewed agrics. Subsidies

Debt

80% belongs to Land Bank.

Govt: Subsidised life-styles,

absentee-farming

Landed gentry strong claims

- both counts

Others - poorer land -

strong claims.

Agri-business - Speculative/
productive

High tax - instead
of rebates. Dead
investment 'in case'

Tied up. ~~Low~~

Make it uneconomic to tie up
land - productive.

specific, concrete, grows out of life situation
Values dimension (b) Negotiations
Contract / shared experiences

Underlying notions of res) - Legality - rules.
Independence

Contract / negot - terms of equality
Differ from pt. of necessity - claim to services.
Fair share
Reciprocity, binding rules.

~~Security of tenure~~
Either say: I own it because I'm white or because of certain values. Or both: we because we're black. Real ownership won't be disturbed. Either we own - or they X

Legal dimension - rule of law.
Law stronger
weaker.

The rule of law down on the farm. order of the place

R. of law - prot. basic const. res works, res family res - part
(1) - against oppression, arbitrariness - assault abuse (search! hrs) susp. (2) Contracts claim - negot

- ③ Plat. of ^{soc.} pts - some provdery - in self housing built roads. mixed contrib. - school clinic access, visiting etc.
- ④ " " workers pts - unionise safety leave
- ⑤ " " gender res written contracts.
- ⑥ Ownership as imperium -

Procedural dimension -

mediation of claims.

Two phases -

Not much / Prelim. ① burning: symbolic return to whites of expropriated land - people graves

doc. proof individual title, undivided shares, usufructual pts: certifi. of occupation, or benefits of trust. Symbolic - communities - known.

- ⑦ Employees pts Labour tenants. Defensive pts labour tenants.

① Land is finite -
unlike votes
can't be
extended

② Don't re-distrib- land
you re-distribute across
a control

Denied - one by one
lifting laws - not enough
Just title deeds - state -
undetermined lkk-prop. rts -
maintaining dispossession.

Other - laws - gtee rts -
whether called priv. prop.
or not.

Re - legitimise Law. Values/
proceeds.

(a) Qualities of private property
alleged:

Security

Indep - state inter.

Freedom to contract or not

Stable, enduring & changes

Fruits of labour - expended on phy.

~~Rego~~ Contract - binding legality, reciprocity
- inequality, shared interest same land

2 Distinct processes -

- 1) Establishing ^{common} values on the basis of all being involved in process of hammering out criteria
- 2) actual application - deeply personal - this farm, these people.

Compensation - where real conflict of interests exists -
comp. for interest, not for mere legal title + market'. Could be in land elsewhere. could be for black or white workers. Land for housing.

③ Sharing the land -
- non-hegemonic / white or black
as such.

Face head-on: land - race - domin.
get rid of racialisation of land.

FC - SA belongs all
Land shared - those who work
Luthuli. Today.

True sharing - not a question
of spatial props. or quotas.
- values, interest -

Criteria ~~XXXX~~ - established in
consult. - farmers - e.g. -

(Land - whole country)

Necessity/ w/land.	birthright.
Housing -	occup.
	prod-use
	inherit.
	title - ancient & now.

Process -

① ~~Defensive~~ ^{Defensive} period - enforcing rule of law.

Moratorium. on eviction. (Period of establishing criteria)

② Fixed Rents - Clear claims

③ Labour tenures - Birth & occupancy

④ Farm leases - Wage - schooling.

⑤ Class claims of 13% - 80% in terms of redistribution

Here ^{productive potential} productivity - of land value $\rightarrow$ tap.
productivity - if debt
can be useful ^{regulators} regulators.

~~Land~~ to live
to work.

~~Class~~
Support.
Groups?
depend on

East - trad -
W - scattered farm
centralised
collect. units.